Supreme Court, U.S.
FILED

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IN THE

Supreme Court Of The United States

BRUCE A. JACKIM,

Petitioner,

v.

STATE OF OHIO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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Pro Se

QUESTION PRESENTED

Whether the highest state court can decline jurisdiction for want of a "substantial constitutional question" where there is a clearly defined conflict in the interpretation of the state's black letter laws and case precedent relating to the implementation of state and federal enumerated rights.

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OPINION BELOW

The slip decision of the Supreme Court of Ohio relating to the felony appeal is reported at *State v. Jackim*, 925 N.E.2d 1003 (Ohio 2010) *See* Appendix A.

STATEMENT OF JURISDICTION

The Supreme Court of Ohio declined jurisdiction and dismissed the Petitioner's felony appeal on May 5, 2010. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the persons or things to be seized.

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject to the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory processes for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

The Petitioner asserts that the highest court in a state that has enacted black letter speedy trial laws "...to prescribe a reasonable period consistent with constitutional standards..." pursuant to *Barker v. Wingo*, must adjudicate an appeal based on its merits where there is conflict in the interpretation of the state's black letter laws and case precedent relating to speedy trial. *Barker v. Wingo,* 407 U.S. 514, 523 (1972), cited in *State v. Ladd,* 383 N.E.2d 579 (Ohio 1978). To wit, a conflict in the interpretation of the state's speedy trial black letter laws and case precedent

necessarily raises a substantial constitutional question.

Based on the above, the Petitioner asserts that the highest court of a state must:

1. Address violations in the interpretation of the state's black letter law,

2. Address the prosecutorial misconduct that led to the violations, and

3. Address the abuse of judicial discretion or judicial bias that enabled the misconduct by the prosecution.

The Petitioner asserts that, when the prosecution formally waived responding to the Petitioner's appeal styled as a memorandum in support of jurisdiction before the Ohio Supreme Court, the prosecution conceded and cannot now contest that the following underlying facts are true:

1. That the criminal proceedings were marred by multiple acts of prosecutorial misconduct involving violations of the Sixth Amendment,

2. That the holdings of the lower state courts appear to be in conflict with both black letter law and case precedent, and

3. That the holdings by the lower state courts appear to be in violation of the Fifth and Sixth Amendments applied to the states through the Fourteenth Amendment.

The Petitioner asserts that, based on the uncontested facts and law in the Petitioner's memorandum in support of jurisdiction and supporting brief, he was:

1. Arrested without reasonable suspicion or probable cause to cover an act of police misconduct – violating the Fourth Amendment,

2. Maliciously prosecuted in order to bar civil liability for the act of police misconduct,

3. Denied due process by the lower state courts.

The Petitioner asserts that the United States Supreme Court must send cases like this back to the highest state court for adjudication based on the merits to ensure the integrity of federal law through uniform application by the states.

REASONS FOR ALLOWANCE OF THE WRIT

The United States Supreme Court's "principal responsibility" and "primary basis" for reviewing state-court decisions "is to ensure the integrity and

uniformity of federal law." *Kansas v. Marsh*, 548 U.S. 163, 183 (2006) (Scalia, J., concurring).

This writ must be allowed to restore the rule of law in states where the highest court in that state is under the thumb of the lower courts. In this case, the Petitioner moved to certify a conflict at the Ohio Court of Appeals, Eighth Appellate District because the holdings of that court violated state black letter law and were inconsistent with precedent in other state appellate districts. Had the appellate court approved the motion, review by the Ohio Supreme Court would have followed and the constitutional issues resolved. Instead, the motion was denied. *See* Appendix B. By denying the motion to certify a conflict, the state appellate court effectively blocked review at the state level of a holding that reinterpreted the state's black letter laws and case precedent relating to the constitutionally protected rights of speedy trial and probable cause. However, the appellate court did not want its unique interpretation reviewed.

This writ must be allowed to restore the rule of law in states where the highest state court is being held hostage by its own staff – a condition that undermines the application of due process and threatens the integrity of the rule of law. The Petitioner provides the following to support this assertion:

1. The originating case was not a "Discretionary Appeal (Non-Felony); Claimed Appeal of Right" as indicated by the Ohio Supreme Court's docket. Since a court speaks through its docket, this is no small error. It suggests that the staff assigned to the case did not read or did not understand the holding by the Eighth District Court of Appeals or the Petitioner's memorandum in support of jurisdiction, both of which clearly identify that the Petitioner was convicted of a felony. If something this simple was misconstrued, then there is no assurance that the case was ever properly presented prior to declining jurisdiction.

2. The docket in a related case, an Original Action in Mandamus, is even more irregular. The Ohio Supreme Court docket in case number 2009-1855 reveals that the motion to dismiss the writ of mandamus was docketed November 6, 2009, followed immediately thereafter by journal entry "12/30/09: Granted; cause dismissed", followed thereafter by docket entry "11/13/09 Memo opposing motion to dismiss, Filed by: Jackim, Bruce". This suggests that the holding was post-dated and that the Petitioner's opposition to the motion to dismiss was neither read nor

considered. This assertion is further supported by the fact that the Eighth District Court of Appeals released their opinion on December 17, 2009 – thirteen days before the date the Ohio Supreme Court dismissed the writ of mandamus.

3. The holding in the aforementioned writ of mandamus is also highly irregular. The second sentence of the first paragraph is a sentence fragment followed by a comma that normally precedes the reason(s) for granting the motion to dismiss. *See* Appendix C. However, nothing follows this *pro forma* intro, so no reasoning behind the holding was provided.

4. The holding in the aforementioned writ of mandamus is important because counsel for the Respondent Ohio Court of Appeals, Eighth Appellate District falsely asserted that the Petitioner had "an adequate remedy at law" to any prosecutorial bias in the adjudication process of Ohio Court of Appeals, Eighth Appellate District in the direct criminal appeal – a process that was permitting submissions under forged signatures, facts unsupported by the record, and the deliberate misinterpretation of statutes and precedent. The remedy at law identified was a right to appeal to the Ohio Supreme

Court. This puts the holding in the writ of mandamus in direct conflict with the holding summarily denying the Petitioner's felony appeal – an error that a well-informed and competent jurist was unlikely to make.

5. Since the holding in the writ of mandamus was never forwarded to the state reporter, never given an official state case citation, and never appeared in case announcements – coupled with its unfinished form and docketing irregularities – there is an appearance of impropriety that suggests that the chief justice's signature was improperly obtained and that the proceedings were an elaborate sham run without the full knowledge of the Ohio Supreme Court.

It is evident that despite the state's enactment of black letter laws, case precedent, and codes of professional ethics, many state courts are unable to exercise judicial independence. That the emphasis on crime control, team spirit, and fraternity coupled with the pressures of getting re-elected has undermined both uniform application of due process and the integrity of the rule of law.

Despite black letter law, case precedent, and codes of professional ethics, many state prosecutors are unwilling or unable to faithfully discharge their

duty to the public, especially in cases where civil liability has attached, because they often work at the pleasure of an elected city or county prosecutor, district attorney, or law director. This too undermines the application of due process and the integrity of the rule of law.

The rule of law and the integrity and uniformity of federal law is threatened when the highest state court, the one responsible for addressing constitutional questions, stumbles and lets the lower courts abuse judicial discretion with holdings that violate state black letter laws and case precedent that implement federal laws.

The failure of the highest state court responsible for addressing constitutional questions increases the caseload of the United States Supreme Court, which increases the likelihood that innocent citizens will have their felony convictions by lower state courts upheld. When unchecked, this ultimately leads to further abuses of judicial discretion and corruption where prosecution is replaced by persecution that undermines public confidence in the judicial system.

> "It does no violence to the legal doctrine of *stare decisis* to right that which is clearly wrong. It serves no valid purpose to allow incorrect opinions to remain in the body of the law." *Westfield Ins. Co. v.*

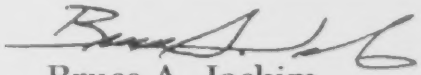
Galatis et al., 797 N.E.2d 1256 (Ohio 2003).

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant review of this matter.

In addition, we respectfully request that this matter be referred to the United States Attorney General for investigation.

Respectfully submitted,



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